IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:09.10.2006

CORAM

THE HON'BLE MR.JUSTICE R.BALASUBRAMANIAN
&
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

TAX CASE (APPEAL) NO.211 OF 2003

M/s.Pyramid Films International
7, West Road, West CIT Nagar
Chennai - 600 035 ..Appellant

Vs.

The Deputy Commissioner of Income Tax
City Circle-VI (Inv), Chennai ..Respondent

Prayer: Appeal against the order of the Income Tax Appellate Tribunal, "B" Bench dated 24.10.2002 in I.T.A.No.291/2002. for the assessment year 1996-97 against the order of the Commissioner of Income Tax (Appeals) VI dated 31.1.2002 and made in ITA No.342/2001-02/VI against the order of the Deputy Commissioner of Income Tax City Circle V (Inv.II) II Floor, Kannammai Building No.611, Anna Salai, Chennai- 600 006 dated 24.4.2001 and made in PAN/GIR NO.2304-P.

For Appellant : Mr.V.Ramachandran, SC for
Mrs.Anitha Sumanth

For Respondent : Mrs.Pushya Sitaraman
Sr.Standing Counsel for IT

JUDGMENT

(Judgment of the court was delivered by
P.P.S.Janarthana Raja, J.)

This appeal, filed under section 260A of the Income Tax Act, is by the assessee. On 01.12.2003, this court admitted the appeal and formulated the following substantial questions of law:

"1. Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal is right in holding that Rs.1.25 crores has accrued to the appellant during the relevant assessment year?

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2. Whether on the facts and circumstances of the case, the Tribunal was correct in law in confirming the addition of Rs.1.25 crores despite the fact that the appellant having received only Rs.95 lakhs towards the contract price?"

2. The facts leading to the above questions of law are as under:

The assessee is a partnership firm and it is engaged in production of feature films. The relevant assessment year is 1996-1997. The assessee filed its return on 25.10.2000 admitting a loss of Rs.27,37,593/-. During the assessment year, the assessee had produced and released a film called "Love Birds". The assessee entered into an agreement for the dubbing rights of the said picture in Hindi language on 02.02.1995. The agreed consideration was a consolidated royalty of Rs.75 lakhs. The payment schedule agreed upon was:

Rs.10 lakhs - on signing of the agreement;
Rs.20 lakhs - on 05.04.1995;
Rs.10 lakhs - on 15.06.1995;
Rs.5 lakhs - on 15.07.1995 and
Rs.30 lakhs - on or before 90 days from the date of Tamil release or the date of Hindi release, whichever is less.

Later on, the assessee entered into a letter of agreement dated 01.12.1995 and the consideration was revised upwards to Rs.1,25,00,000/-. The letter of arrangement also specified the revised mode of payment as follows:

Rs.45 lakhs - already paid
Rs.25 lakhs - on or before the delivery of the Audio dat
Rs.25 lakhs - on Tamil film release
Rs.30 lakhs - as per the original agreement.

3. The Assessing Officer had added the entire amount of Rs.1.25 crores as income for the assessment year 1996-1997. Aggrieved by that order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) and the Commissioner of Income Tax (Appeals), dismissed the appeal and confirmed the order of the Assessing Officer. Aggrieved, the assessee filed an appeal before the Income Tax Appellate Tribunal (hereinafter referred to as the "Tribunal), which confirmed the order of the lower authorities and dismissed the assessee's appeal.

4. Mr.V.Ramachandran, learned Senior Counsel appearing for the assessee submitted that as per the agreement dated 02.02.1995, the payment schedule was fixed by the parties and the final payment was due on or after 90 days from the date of release of the Tamil film or on the day of Hindi or any other language release, whichever is earlier. According to the learned counsel, the Tamil version of

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the film was released on 10.01.1996 and hence the final settlement has to be made only on or before 10.04.1996, which is beyond the previous year and hence it is assessable for the subsequent assessment year. It is further submitted that Rs.30,00,000/- was also offered for assessment, for the subsequent assessment year. It was pointed out by the learned counsel that eventhough the wording in the schedule of payment states "on or before 90 days from the date of Tamil release or on the day of Hindi or any other languages release, whichever is earlier", it should be actually read as "on or after 90 days from the date of Tamil release or on the day of Hindi or any other languages release, whichever is earlier", in the context of the agreement and circumstances of the case and also the intention of both the parties. Moreover, even though the original agreement was executed for a total consideration of Rs.75 lakhs, the parties have agreed to increase the amount to Rs.1.25 crores by a subsequent agreement dated 01.12.1995. However, the payment schedule has been maintained as per the original agreement. Further it is submitted by the learned senior counsel that, whatever amount received before the release of the Tamil version of the film, has to be treated as advance and hence, no income accrued to the assessee during the relevant assessment year under consideration. He further submitted that the right to receive money would depend upon the performance of an obligation as per the agreement and hence, the royalty or any other sum received as advance has not accrued to the assessee as income during the relevant period. Hence, the additions made by the Assessing Officer is illegal and without any basis.

5. Learned Senior Standing Counsel appearing for the Revenue submitted that admittedly, the film certification for the Tamil version was issued on 10.01.1996 and the film was released on the same day. Therefore, as per the agreement, the final payment has to be made on the date of release of the film i.e., on 10.01.1996 or before 90 days. In other words, the payment has to be made on 10.01.1996 or 90 days before 10.01.1996. Since the Tamil version of the film was released on 10.01.1996, the assessee has a right to receive the balance consideration as per the agreement. Hence, the mere non-payment or non-receipt of money within the financial year cannot be a ground to delete the abovesaid amount from the total income of the assessee. Learned counsel for the Revenue further submitted that, as per the agreement, the assessee had performed his part of the obligation and hence the income had accrued at the hands of the assessee. It is further submitted that the assessee is following mercantile system of accounting and hence, irrespective of the actual receipt of money, the same has to be included in his total income and also relied on the judgment reported in 285 ITR 501 in the case of P.L.Ganapathi Rao and Another Vs. Commissioner of Income-tax.

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6. Heard the counsel and perused the materials available on record very carefully. Admittedly, the assessee had entered into an agreement on 02.02.1995 with M/s.Shradha Entertainers Private Ltd. The learned Senior Counsel appearing for the assessee fairly stated that the amount of Rs.95 lakhs is alone assessable for the relevant assessment year. Hence the dispute in the present case is now only for the assessment of the balance amount of Rs.30 lakhs. It was stated that the said balance amount of Rs.30 lakhs has not even been received by the assessee, till now. Further the due date for receiving the same falls outside the accounting year. As per the said agreement, the final settlement of Rs.30 lakhs was to be made on or after 90 days from the date of Tamil release or the date of Hindi release, whichever is earlier. The relevant clause in the agreement dated 02.02.1995 reads as follows:

"NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

(i) The second part shall pay to the first part for the purpose of remaking/dubbing the said picture in Hindi and all other North Indian languages including Bengali for a sum of Rs.75,00,000/- (Rupees Seventy Five Lakhs Only) in the following manner:

1. Rs.10,00,000/- (Rupees ten lakhs only) on signing of this agreement.
2. Rs.20,00,000/- (Rupees twenty lakhs only) on 5th April 1995.
3.Rs.10,00,000/- (Rupees ten lakhs only) on 15th June 1995.
4.Rs.5,00,000/- (Rupees five lakhs only) on 15th July 1995 and
5.Rs.30,00,000/- (Rupees thirty lakhs only) on or before 90 days from the date of Tamil release or on the day of Hindi or any other languages release, whichever is earlier.

The payment schedule of the aforesaid is the essence of this agreement."

Subsequently, the parties have agreed to increase the amount of Rs.1.25 Crores by a subsequent letter of arrangement dated 01.12.1995, which reads as follows:

"December 1, 1995

M/s.Shradha Entertainers Pvt. Ltd.
385-387 Shah & Nahar Industrial Estate
A-2 Building, 3rd Floor
Dhanraj Mills Compound
Bombay - 400 013

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Fax No.022 495 2166

Dear Sir,

Ref: "LOVE BIRDS" for Hindi Dubbing/Remake.

With reference to our agreement dated 02.02.1995 and the subsequent discussions we had on the above subject, we confirm that we have revised the contract amount from Rs.75,00,000/- (Rupees Seventy Five Lakhs Only) to Rs.1,25,00,000/- (Rupees One Crore Twenty Five Lakhs Only) as there are some additions in the film like inclusion of Appachi Indian and additional shooting days.

The revised mode of payment will be as follows:

Rs.45,00,000/- - Already paid.
Rs.25,00,000/- - On or before delivery of audio dat.
Rs.25,00,000/- - On Tamil film release.
Rs.30,00,000/- - As per the original agreement.

Please sign the copy of this letter of arrangement as your confirmation.

Thanking You.

Yours faithfully,
PYRAMID FILMS INTERNATIONAL AGREED AND CONFIRMED

V.NATARAJAN SHRADHA ENTERTAINERS PVT. LTD."

As per the above payment schedule, the first three instalments amounting to Rs.95 lakhs had accrued to the assessee and also received the same. Learned counsel appearing for the assessee also fairly stated that it is assessable during the accounting year. With regard to the balance amount of Rs.30 lakhs, the said amount is payable on or after 90 days from the date of Tamil release or on the day of Hindi or any other languages release, whichever is earlier. In this case, the Tamil version of the film was released on 10.01.1996. So, the period of 90 days ends on 10.04.1996. The assessee is entitled to receive the money only on or before 10.04.1996. The said due date falls outside the accounting year. Hence the same is assessable only for the subsequent assessment year. We also agree with the Learned Counsel that the wording "on or before" should be read as "on or after", in the context of the agreement and circumstances of the case and also the intention of both the parties. Learned Standing Counsel appearing for the Revenue relied on the Andhra Pradesh High Court judgment reported in 285 ITR 501 in the case of P.L.Ganapathi Rao and Another Vs. Commissioner of Income-tax. In that case, the assessee firm carried on business in distribution of feature films, acquired

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rights over a film during the year 1974 from its producers, and during the assessment year 1986-87, the assessee transferred the leasehold rights in respect of the film by an agreement dated December 1, 1984 for a consideration of Rs.4,00,000/- which has to be paid immediately on execution of the agreement. The said agreement states that the amount of Rs.4,00,000/- shall be adjusted in five years, Rs.1,00,000/- in the first year, Rs.90,000/- in the second year, Rs.80,000/- in the third year, Rs.70,000/- in the fourth year and Rs.60,000/- in the fifth year. The entire amount of Rs.4,00,000/- was paid to the assessee in the year in question but the assessee showed only Rs.1,00,000/- as income for the assessment year 1986-87 and showed the balance amount as a deposit. The Court also held that the assessee received Rs.4,00,000/- on the execution of the agreement. Once the amount is received in a year, the same cannot be spread over for five years and the same can be taken as income only for the year in which amount is received. Hence, the Court came to the conclusion that the amount received, could not be spread over for five years. The facts in the above case, is entirely different from the facts in the present case. In the present case, the actual amount received was Rs.95 lakhs during the accounting year and the same was assessable and the right to receive the balance amount of Rs.30 lakhs falls outside the accounting year. So, we find that the Andhra Pradesh High Court Judgment cited supra is, in no way helps the Revenue.

7. It is seen from the facts that before the due date the assessee has no right to claim from the other party. If the other party refuses to pay before the due date, the assessee cannot enforce the same. The due date is very relevant which gives right to the assessee to receive the amount.

8. Taking into consideration all the facts, we are of the view that only Rs.95 lakhs alone is assessable for the assessment year 1996-97 and hence the Tribunal is right in taxing the same during the relevant assessment year. In respect of the balance amount of Rs.30 lakhs, it is not taxable during the assessment year as it accrues only for the subsequent assessment year and also it is seen from the records that the said amount of Rs.30 lakhs was not at all received till now. Under these circumstances, we are of the view that only Rs.95 lakhs alone has been accrued to the assessee during the accounting year and hence the same is taxable for the assessment year 1996-97 and to that extent the order of the Tribunal is confirmed. With regard to the balance Rs.30 lakhs, it is not taxable for the assessment year 1996-97 and to that extent the order of the Tribunal is set aside.

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9. With the above observation, we answer the question partly in favour of the assessee and partly in favour of the Revenue. The tax case is disposed of accordingly. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

Vsl/km

To

1.The Deputy Commissioner of Income Tax,
City Circle-V (Inv), Chennai

2.The Commissioner of Income Tax (Appeals), VI Chennai

3. The Assistant Registrar, Income Tax Appellate Tribunal,
III Floor, Rajaji Bhavan, Besant Nagar, Chennai.

1 cc to M/s. Anitha Sumanth, Advocate, Sr. 47279

T.C. (A) No.211 of 2003

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